

### **REMARKS**

These remarks are in response to the Office Action mailed April 3, 2009. Claims 2, 6, 8, 49 and 67 have been canceled without prejudice to Applicants' right to prosecute the canceled subject matter in any divisional, continuation, continuation-in-part or other application. Claims 1, 3-5, 7 and 40 have been amended. Support for the amendments to claim 1, 3-5, 7 and 40 can be found throughout the specification as filed (see, e.g., original claim 2, page 2 and page 12). The "NH2-" and "-COOH" have been removed from the claims to be consistent with the specification and remainder of the claims in view of the description that the sequence "contains" SEQ ID NO:1. No new matter is believed to have been introduced.

#### **I. REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Claims 1-8 and 40-44 stand rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards and the invention. In particular, the Examiner has indicated that the claims recite amino and carboxy terminal ends and thus are "closed" whereby the term "containing" is inconsistent with the remainder of the claim. Applicants respectfully traverse this rejection with respect to the amended claims.

Applicants have amended the claims to remove "NH2-" and "-COOH" so that the claim language is consistent with the term "containing" as described for example at page 12. Accordingly, Applicants respectfully request withdrawal of the rejection.

#### **II. REJECTION UNDER 35 U.S.C. §102**

Claims 1, 3, 5, 7, 8 and 40-42 stand rejected under §102 as allegedly anticipated by U.S. Patent No. 7,452,864 to Stahle-Backdahl et al. Applicants respectfully traverse this rejection.

Stahle-Backdahl et al. do not teach sequences between 16 and 31 amino acids in length containing SEQ ID NO:1 or containing SEQ ID NO:13. Accordingly, Stahle-Backdahl et al. cannot anticipate Applicants' claimed invention.

Claims 1, 3-7, 40 and 42-44 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by Johansson et al. (J. of Biol. Chem). Applicants respectfully traverse this rejection.

Johansson et al. do not teach or suggest a polypeptide consisting of about 16 to 30 amino acids in length containing the sequence of SEQ ID NO:1 or 13. Furthermore, Johansson et al. do not teach or suggest the polypeptides of claim 7 which contain SEQ ID NO:13. Thus, because Johansson et al. do not teach or suggest each element of Applicants' claimed invention, Johansson et al. cannot anticipate Applicants' claims. Accordingly, Applicants respectfully request withdrawal of the rejection.

### **III. PROVISIONAL OBVIOUSNESS-TYPE DOUBLE PATENTING**

Claims 1-8 and 40-42 stand provisionally rejected on the group of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 1-9 and 26 of co-pending application no. 10/575,552. Applicants respectfully traverse this rejection.

Applicants respectfully submit that the claims of co-pending application no. 10/575,552 may require different inventorship and thus could not be claimed in the same application. Furthermore, because an obviousness-type double patenting rejection is based upon the claims as allowed or issued, Applicants respectfully request the rejection be held in abeyance until such time as allowable subject matter is identified.

For, at least, the foregoing reasons the claims submitted herewith are non-obvious over the references either alone or in combination.

For at least the foregoing, the Applicant submits that the claimed invention is patentable and request reconsideration and notice of such allowable subject matter.

The Director is authorized to charge any required fee or credit any overpayment to Deposit Account Number 50-4586, please reference the attorney docket number above.

The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

GAVRILOVICH, DODD & LINDSEY LLP

Date: August 3, 2009

By: /Joseph R. Baker, Jr./  
Joseph R. Baker, Jr.  
Registration No. 40,900

4660 La Jolla Village Drive, Suite 750  
San Diego, California 92122  
(858) 458-3607 (Main)  
(858) 458-9986 (Fax)